

**OBJECTIONS TO PLANNING COMMISSION APPROVAL OF MINOR USE PERMIT
NO. UP2012-009 (PA2012-070) FOR ALCOHOL LICENSE SUBMITTED BY
APPLICANT PAND REALTY LLC RELATIVE TO THE PORT THEATER, CDM**

Project Description (pp. 5 – 6. Please note that all references to page numbers in these objections are to the numbers in the lower right-hand corner of the page.) The application was referred to the Planning commission by the Zoning Administrator for consideration and action. See Zoning Administrator's memo to the Planning commission (Attachment No. PC 4) The October 9, 2012 memo acknowledges "the characteristics of the use, the location of the theater in a difficult parking area, and the sensitivity of the community". (emphasis added) This is ONLY one of two times in the entire Staff Report and attached documents that the **difficult parking area** is even acknowledged. All other references to the parking (or lack thereof) is offhandedly dismissed by concluding it is a "landmark" theater, and therefore exempt from any requirement to provide parking. The fallacy of this conclusion is explored further in these objections.

Consistency with General Plan/Coastal Land Use Plan/Zoning (p. 6) The Zoning Code is silent regarding alcohol service within theaters, however the Community Development Director has determined that a minor use permit was the appropriate discretionary permit application for the proposed use. The Report fails to state the basis for this determination.

Alcohol Sales (p. 7) The Report acknowledges and then ignores the fact that the part one crimes rate, DUI/drunken arrests, calls for service and per capita ratio of alcohol licenses in RD 44 for 2011, were higher than the three adjacent reporting districts. The report attempts to dismiss these statistics due to the proximity of Corona Del Mar State Beach which draws thousands of visitors annually. However, the report fails to acknowledge that drinking is not allowed on the State Beach. Additionally the fact that the Police Department reported only one call for service to the theater in 2011 and 2012, is supportive of the position that the Port Theater should remain a NON ALCOHOL theater.

The Project Report (p. 7) correctly acknowledges that homes are located 60 feet west of the theater, a fact that is ignored in the findings and conclusions. The report (p.7) additionally acknowledges and then ignores the fact that there are 26 total alcohol licenses within RD 44 and the alcohol statistics indicate an over concentration of alcohol licenses. (emphasis added) **The last thing the community needs is another alcohol license!**

Security Plan (p. 8, ¶ 1) The Project Report indicates that the Police Department **will** require a security plan, however no security plan has been required prior to approval, which is a major deficiency in the application and report process. If the PD recommends a security plan, it should be a part of the application process otherwise it will probably never come to fruition. Allegedly, the security plan will address enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment. These are all critical issues to the residents of the community that live immediately adjacent to the Theater, for up to 500 patrons will potentially be attending a "special event" 12 times a year, and parking in the residential neighborhood. (And up to 350 people without a special event permit) It is known that Alcohol can cause loud, boisterous, aggressive, combative and destructive behavior.

These intoxicated people will be parking on our streets, slamming car doors, walking in our neighborhoods, talking/yelling/swearing loudly and potentially getting in fights (which has already happened at the Port Theater). This is the only other acknowledgment in the report that **"parking/circulation" could be an issue.** But it stops here. There is no further discussion, analysis and no proposed solution. It is just swept under the proverbial "landmark theater" rug.

Staff reaches the conclusion (p. 8, ¶ 2) "Staff believes this finding can be made and that it is appropriate to allow the alcohol service within the existing theater because it was originally designed to accommodate a theater use and will be conditioned to remain consistent with this primary use." Firstly, what does "Conditioned to remain consistent with this primary use" mean? It is just a conclusory statement by staff to get to where they apparently want to go – the approval of the application. Secondly, the Port Theater has never served alcohol, and to do so is completely inconsistent with its primary use since its inception.

Staff reaches the additional conclusion (p.8, ¶ 2) "...Staff believes the physical and operational characteristics of the establishment would make the service of alcoholic beverages **acceptable.**" However, there is no description of what "physical and operational characteristics" would make this so, and how it would be accomplished. Moreover, staff fails to identify to whom the service of alcoholic beverages will be "acceptable." Apparently it will be acceptable to staff, who seek to approve the application, and to the applicant, but what about the residents of the community who will be affected by the problems that alcohol related issues will visit upon their homes, families, streets and neighborhood. "The additional menu options" that alcohol will provide appear to take precedence over any concern about endangering, jeopardizing, or otherwise constituting a hazard to the public convenience, the health, interest, safety and general welfare of persons residing in the neighborhood of the proposed use. Representatives of the Port Theater have opined that the service of alcohol is just an addition of a new "menu item". It must be recognized that there is quite a drastic difference between the effect of consuming a large bag of popcorn and candy and the consumption of numerous alcoholic beverages. The differences affect the behavior of the individual when walking, talking and driving. It is known that Alcohol can cause loud, boisterous, aggressive, combative and destructive behavior. These intoxicated people will be parking on our streets and walking in our neighborhoods. As discussed herein, the Port Theater is not providing parking for their patrons and the City is not requiring it based upon what appears to be a misinterpretation and/or misuse of the Landmark Structures Ordinance , Section 20.38.070.

Furthermore, Staff makes the following conclusory representation (p.8, ¶ 2) "The draft resolution includes conditions of approval to minimize alcohol related problems and ensure that the use remains compatible with the surrounding community." However, there are no "conditions of approval" that minimize the reality of the crime rate and alcohol statistics, and the failure to address the parking situation which will bring potentially 350 to 500 intoxicated people into the adjacent residential neighborhood.

The need to "enhance the economic viability of the business" (p.8, ¶ 2) is apparently a goal of the Staff and its resulting recommendation of approval. However, it must be remembered that the owner/applicant chose to develop the Port Theater knowing that there had never been any prior alcohol service or sales. It therefore follows that he should not now be able to rely on economics

as the reason the sale of alcohol should be allowed, when he knowingly chose to redevelop the "landmark theater". Is the sale of alcohol to "enhance the economic viability of the business" going to take precedence over any concern about endangering, jeopardizing, or otherwise constituting a hazard to the public convenience, the health, interest, safety and general welfare of persons residing in the neighborhood of the proposed use? It is respectfully submitted that this should NOT be the case.

"The existing theater is in the heart of a commercial **and residential** area within Old Corona del Mar and is a permitted use consistent with the landmark structures ordinance". (p.9, ¶ 1) **It is also in the heart of a residential area within Old Corona del Mar. Its use is only consistent with the landmark structures ordinance, if alcohol is not served or sold. There is NO provision in the Landmark Structures Ordinance 20.38.070 regarding allowing the sale of alcohol in a Landmark Structure. Clearly, what staff is recommending is a deviation from the intention of the Landmark Structure Ordinance.**

Section 3. REQUIRED FINDINGS. A iv. 1: "...the service of alcoholic beverages is acceptable for this location." (p.15) Even though the Port restaurant, The Place and Mayur are in close proximity, the report opines that the "use" is different than other establishments selling alcoholic beverages. Yes, the "use" is different because it is enhanced! Instead of only being able to order alcohol with food, alcohol can be consumed during movies, during live entertainment and "other actual events". So the consumption of alcohol will be expanded beyond what is allowed in these other restaurant establishments. Furthermore, patrons will be allowed to purchase two (2) alcoholic beverages at one time without even the limitation that it be purchased and consumed with food. The report is alarmingly silent as to how many times a patron can order two (2) drinks at one time! (See, p. 57, No. 4 of Police Department Recommended Conditions)

Section 3. REQUIRED FINDINGS. A. v. 1. The report acknowledges "The addition of alcohol service is a new request to an existing theater use". (p.15) There is **no** provision in the Landmark Structure Ordinance that there can be the "addition of alcohol service to the existing landmark theater designation", as staff is attempting to allow.

Section 3. REQUIRED FINDINGS. B. 2. (p.16) The addition of alcohol service is **not consistent with the standards of the landmark structures ordinance** and the granting of a license to sell alcohol should not be allowed.

Section 3. REQUIRED FINDINGS. C.2. "The project has been conditioned to limit objectionable conditions resulting from the service of alcohol at the theater ..." (p.16) This is yet another conclusory statement unsupported by facts. Firstly, what does "conditioned to limit objectionable conditions" mean? Secondly, there are no "conditions" that minimize the reality of the crime rate and alcohol statistics, and the failure to address the parking situation which will bring potentially 350 to 500 intoxicated people into the adjacent residential neighborhood. **Moreover, these conclusory statements totally ignore how alcohol will exacerbate the already problematic parking situation!**

Section 3. REQUIRED FINDINGS. D. 2 (p. 17) "The remodeled theater is consistent with the requirements of Section 20.38.070 (Landmark Structures) of the Zoning Code, where parking

demand, seating, and occupant loads are well below that prior to the remodel of the theater. Thus, on-site parking is not required for the theater use to continue." Importantly, the "theater use" has never included the use of alcohol, and neither did Section 20.38.070 (Landmark Structures) address or contemplate the sale of alcohol. The type, condition and demeanor of people parking for a daytime or evening showing of an animated or foreign film (as they have over the last 40 plus years), is dramatically different than those that have consumed alcohol during a highly charged environment such as a sporting event, an R rated action movie, or a 500 person gala. The "Background" on Page 3 allows that 12 events per year (once per month) may exceed the 350 occupant load and can potentially go up to 500 people – 500 intoxicated people!! It is apparently the authors of the Project Report that have taken it upon themselves to conclude that the obtaining of an alcohol license by the owner of a "landmark structure" is permitted and appropriate. **A determination of this magnitude should not be allowed to be backdoored in this manner.**

Section 3. REQUIRED FINDINGS. D. 5 (p. 16) "The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure that the business remains a theater and does not become a bar, club or tavern". Detective Montero has made it clear to the undersigned that the Police Department has not been asked to address the issue of parking. The difficulty regarding parking and parking/circulation has only been acknowledged two times in this Report, and there is no further discussion or analysis and clearly no proposed solution. Additionally, this finding only states that the "project has been conditioned to ensure that the business remains a theater and does not become a bar, club or tavern". However, the Police Department Recommendations in Attachment No. PC 7, (p. 57) also include the terms "cocktail lounge" and "nightclub". **The terms "cocktail lounge" and "nightclub" should be inserted into the Draft Resolution as well as any potential Final Resolution, even though they are already contained in "Exhibit A"- CONDITIONS OF APPROVAL- in order that these prohibitions are crystal clear.**

Section 3. REQUIRED FINDINGS. F. 1-3. (p.18) These are the alleged facts supporting that the sale of alcohol as proposed will not "endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest or general welfare of people residing in the neighborhood."

Points 1 through 3 (p.18): What does it mean for the operator to be "required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalk and areas surrounding the subject property and adjacent properties during business hours"? Firstly, this alleged "requirement" is vague, ambiguous and unsupported by any concrete direction and thus entirely unenforceable. What are the "reasonable steps"? And, what does it mean to "discourage and correct"? **This requirement needs to be spelled out in clear and concrete terms which can be enforced, and if not complied with will result in the Minor Use Permit being rescinded, withdrawn or rendered null and void.**

Point 2 (p. 18) suggests that the providing of alcohol service as a public convenience to the surrounding neighborhood is something that is wanted, desirous or needed. As pointed out above, the Report acknowledges and then ignores the fact that the part one crimes rate,

DUI/drunken arrests, calls for service and per capita ratio of alcohol licenses in RD 44 for 2011, were higher than the three adjacent reporting districts. Additionally, there are 3 establishments in very close proximity to the Port Theater if inhabitants of the surrounding neighborhood of Corona del Mar desire want to frequent an establishment with alcohol service. Moreover, in the first three tenths of a mile in Corona del Mar there are 14 establishments with liquor licenses. Please see the attached PROTEST AGAINST ALCOHOLIC BEVERAGE APPLICATION filed by a neighbor at 428 Heliotrope, which is incorporated herein by reference, that clearly explains how the granting of this Minor Use Permit will disrupt the lives of residents in proximity to the Port Theater with increased noise, alcohol problems and a parking nightmare.

Point 2 (p. 18) opines that "The service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community". As discussed above, a parking nightmare exacerbated by alcohol will **not** be compatible with the surrounding community. Furthermore, as pointed out above, it needs to be remembered that the owner/applicant chose to develop the Port Theater knowing that there had never been any prior alcohol service or sales. It therefore follows that he should not now be able to rely on the need for "an economic opportunity" as the reason the service of alcohol should be permitted, when he knowingly chose to redevelop the "land mark theater". Is the sale of alcohol to "enhance the economic viability of the business" going to take precedence over any concern about endangering, jeopardizing, or otherwise constituting a hazard to the public convenience, the health, interest, safety and general welfare of persons residing in the neighborhood of the proposed use? It is again respectfully submitted that this should **NOT** be the case.

Police Department Recommendations (Attachment No. PC 7) (pp.55-58) The Police Department Recommendations should be made **requirements prior to any consideration of the request for the Minor Use Permit**. For example, the Police Department Recommendations state that when there are services beyond the traditional movie screenings the applicant's proposed security should include a provision for the use of licensed security services. It should be clearly stated in "Exhibit A" – Conditions for Approval - that the applicant **must** provide licensed security services when the theater is providing services beyond the traditional movie screenings. Furthermore, it should be added that there **must** be a ratio of one security employee for every fifty patrons. The Police Department Recommendations should be requirements, not just recommendations, in order that the violation thereof will result in the Minor Use Permit being rescinded, withdrawn or rendered null and void.

ADDITIONAL POINTS/OBJECTIONS:

1. The Port Theater is uniquely different from the Balboa and Lido Theaters, which are surrounded by commercial areas with ample parking. Additionally, the applicant would like to equate the Port Theater with the theater in Fashion Island which has been remodeled to sell alcohol. The Fashion Island Theater is surrounded by multiple businesses and parking lots and is blocks from a residential area.
2. The Port Theater apparently does not need to have an alcohol license in order for neighborhood groups and/or organizations to have "special events" which include alcohol at the Port Theater. The groups and/or organizations apparently just need to apply for a Special Event

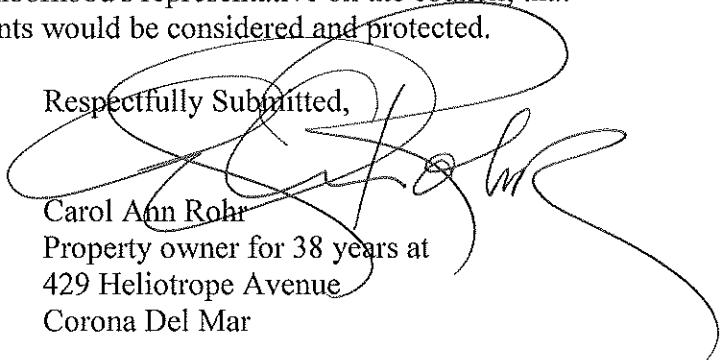
Permit which requests the service of alcohol be allowed. This has already been the case at the Port Theater when there was a "Debate Night" and alcohol was served. This was also the case when the Harbor View Dads had their movie night at the Port Theater, which included alcohol service on the upper level.

IT IS REQUESTED THAT THE APPLICATION FOR MINOR USE PERMIT NO. UP2012-009 (PA2012-070) FOR AN ALCOHOL LICENSE SUBMITTED BY APPLICANT PAND REALTY LLC RELATIVE TO THE PORT THEATER IN CORONA DEL MAR BE DENIED.

ALTERNATIVELY, IT IS REQUESTED that a "TEMPORARY" Minor Use Permit be approved for 1 year which can be revoked at any time for cause and will expire after one year unless revisited and approved. Revisiting would include, but not be limited to, exploring and considering the effects on the public convenience, health, interest or general welfare of people residing in the neighborhood "over the previous year". IT IS MANDATORY THAT ONLY A TEMPORARY MINOR USE PERMIT BE ISSUED IN ORDER TO SEE IF THE OWNER/APPLICANT WILL DO THAT HE HAS PROMISED TO DO AND IS REQUIRED TO DO!!!!!!!!!!!!!! For example, it will need to be determined if the owner/applicant has complied with all 15 conditions of the PD as well as the requirements regarding security. Importantly, the combined negative effects of increased parking needs exacerbated by the service of alcohol, can be assessed. Additionally, since even after a year the long term effects of the sale of alcohol at the Port Theater will not be able to be assessed, there should be a provision that if the Minor Use Permit is ultimately approved, **that it will not pass with the sale of the property and any new potential owner must re-reapply for the Minor Use Permit regarding the sale of alcohol and meet all the requirements for same.**

The City has turned a blind eye to the parking problems/issues relative to the Port Theater, including the combined negative effects of increased parking needs exacerbated by the service of alcohol. A "temporary" one year permit will give the City an opportunity to explore the potential for "permitted parking" on the residential streets adjacent to the Port Theater as a means of alleviating the effects of increased parking needs exacerbated by the service of alcohol. Within the last few years, when discussing parking problems relative to the Port Restaurant, Nancy Gardner advised the undersigned that it was premature to consider "permitted parking" in Corona del Mar. When Nancy Gardner was contacted recently regarding the concerns about the Port Theater obtaining an alcohol license and the effect of the increased parking needs exacerbated by alcohol, she assured the undersigned, as the neighborhood's representative on the council, that the interests of the concerned and affected residents would be considered and protected.

Respectfully Submitted,


Carol Ann Rohr
Property owner for 38 years at
429 Heliotrope Avenue
Corona Del Mar

**PROTEST AGAINST ALCOHOLIC
BEVERAGE LICENSE APPLICATION**

- Please refer to Form ABC-510, Instructions for Protesting an Alcoholic Beverage License Application, before completing and submitting your protest. The ABC-510 can be found at www.abc.ca.gov.
- Please print legibly or type. Incomplete and/or illegible information will cause the protest to be rejected.
- You will be notified by letter regarding a hearing on your protest. You will need to attend the hearing to testify and/or present evidence to support your protest.
- A copy of your valid protest, including your name and address, will be provided to the applicant as a public record and a right of discovery for a protest hearing.

I hereby protest the issuance of a license under the Alcoholic Beverage Control Act to:

Portnewport, Inc.

(Name(s) of Applicant(s))

For premises at:

2905 E Coast Highway, Corona del Mar, CA 92625-2233

(Exact address of proposed premises)

on the grounds that:

This is a residential area and an added liquor license will create more noise and traffic. There is no parking for the business so the patrons will have to park on the residential streets. This will increase the noise and disrupt our lives. People who have been drinking are not aware of the noise that they make as they leave the business.

In the first three tenths of a mile in Corona del Mar, there are 14 establishments with liquor licenses. Tommy Bahamas, Gulfstream, Crowbar, Panini Cafe, Rothschilds, The Wine Store, Bungalow, Avillas El Ranchito, Bamboo Bistro, Summer House, Pasquas at Sherman Gardens, The Place, Port restaurant, and Mayur. This is a larger concentration of liquor licenses that you see in a downtown bar district, not a quiet residential area. This will create additional noise and a nuisance for law enforcement. The Port restaurant has enough problems with noisy patrons leaving after drinking. They park along the residential street and do not use the parking lot.

Portnewport, Inc. is a theater. The business remodelled and removed many seats that allow them to have a large open space without theater seats to have drinking and dancing. They have applied for a conditional use permit. This remodel for the theater was a ruse to establish another bar and make a Night club in a quiet residential neighborhood with no ability to have parking. This will create another problem like Landmark.

The applicant has deceived the residents as this was to be a family theater and wants to add alcohol, dancing and late hours. This will disrupt our lives with increased noise, alcohol problems, and a parking nightmare.

☐ Check here if additional sheets attached

I, William Lyle

PRINT (Name of Protester)

, declare under penalty of perjury:

(1) That I am the protestant herein; (2) That I have read the above protest and know the contents thereof; and (3) That the same is true of my own knowledge except as to those matters which are therein stated on information and belief, and as to those matters I believe to be true.

PROTESTANT'S SIGNATURE

PROTESTANT'S TELEPHONE NUMBER (Optional)

SIGNED AT (City and State)

DATE SIGNED

Corona del Mar, CA

August 3, 2012

PROTESTANT'S ADDRESS (Street number and name, city, state, zip code)

428 Heliotrope Ave

ABC-510-A (07/08)

RECEIVED

AUG 16 2012

RECEIVED

AUG 09 2012

Planning and Legal Unit
Dept. of Alcoholic Beverage Control
SANTA ANA OFFICE

Dept. of Alcoholic Beverage Control
Santa Ana Office

ATTACHMENT TO
OBJECTIONS

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VAB